

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

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**SUSAN P. REVELLO,**

**Plaintiff,**

**-vs-**

**Case No. 6:03-cv-1787-Orl-22KRS**

**LIFE INSURANCE COMPANY OF NORTH  
AMERICA,**

**Defendant.**

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**ORDER**

**I. INTRODUCTION**

This cause comes before the Court for consideration of Defendant Life Insurance Company of North America's Motion to Dismiss Complaint (Doc. 3), Plaintiff Susan P. Revello's Motion to Remand to State Court (Doc. 16), and the parties' legal memoranda opposing those motions. Upon considering these submissions, the Court determines that the motion to dismiss is due to be granted, with leave to amend, and the motion to remand must be denied.

**II. BACKGROUND**

To place the pending motions in proper context, it is necessary to summarize certain events in a prior related case before this Court, *Susan P. Revello v. Life Insurance Company of North America and Insurance Company of North America*, Case No. 6:00-cv-56-Orl-22-JGG (hereinafter, "*Revello I*").

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In *Revello I*, Susan Revello sued LINA and Insurance Company of North America (“INA”) to recover benefits under the same group conversion long-term disability (“LTD”) insurance policy at issue in the instant case, policy GKC-1.<sup>1</sup> The undersigned judge, to whom the case was assigned, entered two orders which are relevant to the motions now pending in the instant case.

The first order, Doc. 55 in *Revello I*, was issued on March 19, 2002; it addressed LINA and INA’s motion to strike Revello’s demand for a jury trial. In bringing the motion, the defendants argued that there was no right to trial by jury on ERISA claims. Revello countered that her LTD benefits claim did not arise under ERISA because the policy at issue was a conversion policy. In a footnote, the Court noted: “This position is inconsistent with Plaintiff’s allegation in both the amended and second amended complaints that this action arises under ERISA.” Doc. 55 in *Revello I* at 1 n.1 (citations omitted). However, the Court did not preclude Revello from opposing the motion on the basis of the ERISA allegations in her pleadings; in fact, the Court made no further mention of these arguable judicial admissions. Instead, the Court proceeded to examine the issue of whether ERISA controlled policy GKC-1. It concluded that it did. Accordingly, the Court stated that Revello was not entitled to a jury trial, granted the defendants’ motion, and struck the jury demand.<sup>2</sup>

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<sup>1</sup>In *Revello I*, the Court determined that the policy was issued by INA, but LINA served as claims administrator and was ultimately responsible for payment of all benefits thereunder. See Doc. 98 in *Revello I* at 2 & n.3.

<sup>2</sup>In the same order, the Court also denied Revello’s Motion to Amend Complaint and Remand Action to State Court (Doc. 52 in *Revello I*), reiterating that the conversion policy was governed by ERISA. See Doc. 55 in *Revello I*, ¶ 3, at 4.

The second pertinent order, Doc. 98 in *Revello I*, was entered on December 11, 2002. That order addressed the parties' cross-motions for summary judgment on Revello's ERISA claim. As a threshold matter, the Court stated that it had previously determined that policy GKC-1 was subject to ERISA; it cited the docket number for the March 19, 2002 Order to support that statement. *See* Doc. 98 in *Revello I* at 2 n.3. After analyzing the language of policy GKC-1 and pertinent ERISA authorities concerning the appropriate standard of review, the Court concluded that the defendants' benefit denial decision was subject to *de novo* review. Turning to the merits, the Court determined as a matter of law that Revello did not meet the policy's definition of disability because she had engaged in unapproved work activities during the period May 1999 to April 2001. The Court also rejected arguments Revello raised in her two motions for partial summary judgment. Accordingly, the Court granted the defendants' summary judgment motion as to Revello's claim for denial of LTD benefits under policy GKC-1 for the period May 29, 1999 through April 30, 2001; directed the Clerk to enter a final judgment in the defendants' favor on that claim; and denied Revello's two motions for partial summary judgment. Noting that Revello's claim for disability benefits for the period from May 17, 2001 forward was still administratively pending before the defendants, the Court also dismissed that claim without prejudice and with leave to pursue it via a separately-filed suit following the completion of administrative proceedings.

Revello did not prevail administratively on her LTD claim for the period beginning May 17, 2001. Accordingly, she filed the instant action in state court, seeking benefits from that date forward. Revello's Complaint essentially asserts a state-law breach of contract claim; it

expressly alleges that Policy GKC-1 is not an ERISA “employee welfare benefit plan.” Doc. 2, ¶ 27, at 5.

On December 15, 2003, LINA removed the case to this Court and contemporaneously moved to dismiss the action. Removal was founded on both federal question jurisdiction and diversity of citizenship. The case was initially assigned to District Judge Gregory A. Presnell. On January 13, 2004, Judge Presnell transferred the action to the undersigned judge because the case was related to *Revello I*. On January 29, 2004, Revello filed a response to LINA’s motion to dismiss; she also moved to remand this case to state court. On March 5, 2004, LINA filed a legal memorandum in opposition to the motion to remand. Accordingly, the motions are now ripe for decision.

### **III. THE PARTIES’ ARGUMENTS**

#### **A. LINA’s Motion to Dismiss**

LINA seeks dismissal on the asserted basis that Revello’s state law claim is preempted by ERISA. The insurer maintains that by virtue of this Court’s rulings in *Revello I* – that policy GKC-1 is governed by ERISA – Revello is barred by the doctrine of collateral estoppel from contending otherwise in the present action. Accordingly, LINA urges the Court to dismiss Revello’s complaint, without prejudice to Revello filing an amended complaint seeking relief under ERISA.

In response, Revello argues that the doctrine of collateral estoppel is discretionary; that the result achieved in *Revello I* was incorrect; that *Revello I*’s determination that ERISA governed was based on alternative grounds, and thus was not a critical and necessary part of the

judgment entered in that case; that it would be unfair to apply the doctrine against Revello in the instant case; and that the doctrine does not apply to the arguments Revello now seeks to make, since those arguments were not raised or decided in *Revello I*.

#### **B. Revello's Motion to Remand**

Revello seeks remand on the asserted basis that this Court lacks subject matter jurisdiction over this dispute.<sup>3</sup> More particularly, Revello maintains that LINA has failed to establish either that ERISA governs policy GKC-1, such that federal question jurisdiction would apply, or that the requisite amount in controversy exists for diversity jurisdiction purposes.

In response, LINA reiterates its argument that the Court has already determined that ERISA applies to this case, and that Revello is therefore collaterally estopped to contend otherwise. Additionally, the insurer stands by its position that diversity jurisdiction affords a "secondary reason for removal," Doc. 21 at 9, and refers to the argument it presented in its removal notice.

#### **IV. ANALYSIS**

The Court of Appeals for the Eleventh Circuit has articulated the following prerequisites to the application of collateral estoppel: (1) "the issue at stake must be identical to the one alleged in the prior litigation;" (2) "the issue must have been actually litigated in the prior litigation;" (3) "the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in that earlier action;" and (4) "the party against whom the

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<sup>3</sup>Alternatively, Revello asks the Court "to defer ruling on the motion pending the submission of evidence by LINA showing that this Honorable Court does have jurisdiction;" she also "requests leave to conduct discovery on the jurisdictional issue." Doc. 16 at 4.

earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding.” *Mike Smith Pontiac, GMC, Inc. v. Mercedes-Benz of North Am., Inc.*, 32 F.3d 528, 532 (11th Cir. 1994), *cert. denied*, 516 U.S. 1044 (1996). Unquestionably, these requirements are met in the present case.

The issue is identical: whether ERISA governs policy GKC-1. That question was actually litigated in *Revello I*. Revello had a full and fair opportunity in the prior action to litigate the issue, and did so. Finally, the foundational determination that ERISA applied was absolutely critical and necessary to the judgment entered in the earlier case. Without first deciding that GKC-1 was an ERISA policy, the Court could not have struck Revello’s jury demand and later applied an ERISA standard of review to decide the summary judgment motions in *Revello I*.

Revello attempts to characterize the Court’s initial ERISA determination in *Revello I* as resting on “alternative grounds.” That argument is meritless. The statement in question – that in arguing ERISA did not apply to policy GKC-1 Revello was taking a position inconsistent with allegations in two of her pleadings that the action did arise under ERISA – consists of a single sentence relegated to a footnote in the March 19, 2002 Order striking Revello’s jury demand. *See* Doc. 55 in *Revello I* at 1 n.1. The remark is obiter dictum; it was made in passing and was unnecessary to the Court’s actual decision on the motion to strike. As previously noted, the Court did not preclude Revello from opposing the motion to strike on the basis of these admissions in her pleadings. Rather, the Court proceeded to examine the issue of whether conversion policies were governed by ERISA, and reached the conclusion that they were. *That*

was the holding of the March 19<sup>th</sup> Order; there was no alternative ground for the Court's decision on the motion to strike.

The foregoing analysis compels the conclusion that LINA's motion to dismiss must be granted. It also resolves the motion to remand. The Court's prior determination that ERISA governs this case applies equally to the question of removal; collateral estoppel principles bar Revello from challenging that ruling for removal purposes, as well.<sup>4</sup> Accordingly, the motion to remand will be denied.

## **V. CONCLUSION**

Based on the foregoing, it is ORDERED as follows:

1. Defendant's Motion to Dismiss Complaint (Doc. 3), filed December 15, 2003, is GRANTED.

2. Plaintiff's Complaint is DISMISSED, without prejudice and with leave to amend.

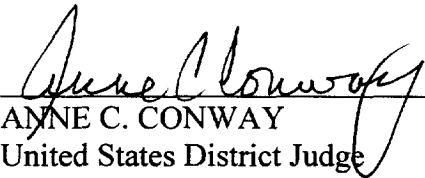
3. Plaintiff is granted leave to file and serve an amended complaint asserting an ERISA claim on or before April 7, 2004. If an amended complaint is not filed by that date, the Court will dismiss this action without further notice.

4. Plaintiff's Motion to Remand to State Court (Doc. 16), filed January 29, 2004, is DENIED.

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<sup>4</sup>In light of that determination, the Court need not reach the parties' arguments concerning diversity jurisdiction.

**DONE** and **ORDERED** in Chambers, in Orlando, Florida this 22<sup>nd</sup> day of March,  
2004.

  
ANNE C. CONWAY  
United States District Judge

Copies furnished to:

Counsel of Record  
Unrepresented Party  
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F I L E   C O P Y

Date Printed: 03/22/2004

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